

Board Meeting

November 14-15, 2000

Association of State and Territorial

ASTSWMO

Solid Waste Management Officials

Attachment 3

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Date: April 21, 2000

To: State and Territorial Solid Waste Program Managers

From: Tom Kennedy

Re: NEJAC Report on MSW Transfer Stations

The purpose of this memo is to call your attention to a document recently sent to State solid waste managers by the Office of Solid Waste of the Environmental Protection Agency (EPA). We have been told that a copy of a March 2000 report, prepared by the Waste Transfer Station Working Group, Waste and Facility Siting Subcommittee, of the National Environmental Justice Advisory Council (NEJAC), titled, "A Regulatory Strategy for Siting and Operating Waste Transfer Stations", was mailed to your office last week. It contains a number of recommendations to the EPA Administrator that take a directive approach to the future siting and management of MSW waste transfer stations, and we call your attention to it.

We are informed that the Assistant Administrator for the Office of Solid Waste and Emergency Response, Tim Fields, will address the NEJAC during its upcoming national meeting in Atlanta, Georgia, May 23-26, 2000, and that he is expected to make initial comments and indicate the Agency's reaction and plans for this report at that meeting.

State members who have reviewed the report believe that it could have significant implications for federal involvement in State MSW activities if the Agency were to accept all the NEJAC recommendations and act to implement those points. A number of State reviewers of the preliminary draft of this report called the originators' attention to those issues, but those are still largely incorporated in the report. To generalize, the State reviewers questioned EPA's jurisdiction and statutory authority to intervene in MSW management of these transfer stations, and in some of the land use and commercial decisions which are suggested by the report. Additionally, those State reviewers thought that the situations in the two major cities identified as problem areas in the report (New York City and Washington, D.C.) were unique to those locations, and that the report did not make an empirical case for such a level of federal intervention across the nation. Queries with State waste managers did not identify similar levels of problems with these facilities, and most managers considered the situations to be enforcement and management issues which can and should be resolved at the local or State level. There is no question that problem transfer stations are a tremendous burden to a community and must be put back into compliance as quickly as possible. However, there is no evidence that the kinds of situations reported here are widespread.

Regardless of these earlier individual views, the real key is how you believe this report relates to the situation and potential for change in the way MSW transfer stations are managed within your

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State regulatory system. We suggest that you may wish to share your views with Tim Fields as he comes to his final conclusions regarding EPA's approach to the matter, in order to assist him in understanding the scope of the potential problems with transfer stations and your State's resolution of those problem areas.

We also note that the report contains a number of recommendations relating to air issues, so you may wish to coordinate with your State air program office as well.

While you locate the full text of the report (look for a yellow cover), we have attached a copy of the executive summary for your easy reference. Thanks for your consideration of the impact of this report on your program.

Enclosure: as referenced

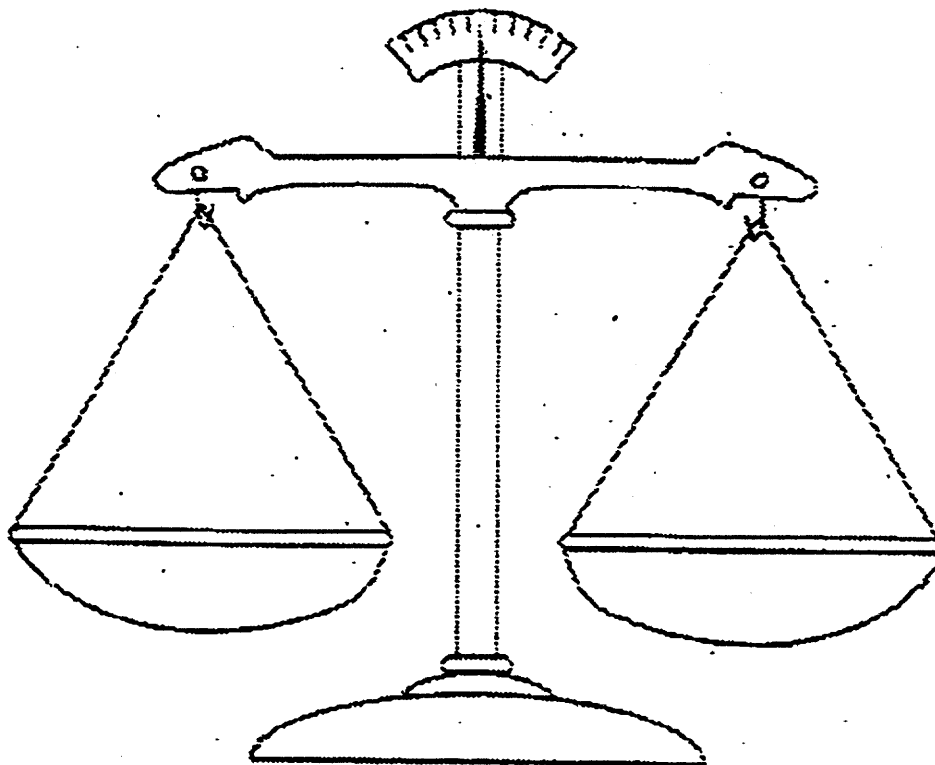
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EPA 500-R-00-001
March 2000

A REGULATORY STRATEGY FOR SITING AND OPERATING WASTE TRANSFER STATIONS

**A Response to a Recurring Environmental Justice Circumstance:
The Siting of Waste Transfer Stations in Low-Income Communities and
Communities of Color**



Prepared by the

***National Environmental Justice Advisory Council
Waste and Facility Siting Subcommittee
Waste Transfer Station Working Group***

A Federal Advisory Committee to the U.S. Environmental Protection Agency

EXECUTIVE SUMMARY

I. Background

The National Environmental Justice Advisory Council (NEJAC) is a Federal Advisory Committee established in 1993 to provide independent advice, consultation, and recommendations to the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. NEJAC has established six subcommittees which address various issues corresponding to EPA's areas of authority, responsibility, and structure. Among the subcommittees is the Waste and Facility Siting Subcommittee.

NEJAC and its subcommittees meet semiannually to plan their activities and address pressing issues raised by the public. During the December 1997 NEJAC meeting in Durham, North Carolina, the closing of New York City's Fresh Kills Landfill and the proliferation of waste transfer stations (WTSs) in low-income communities and communities of color in Brooklyn and the Bronx were raised to the Waste and Facility Siting Subcommittee. WTSs are facilities where municipal waste is unloaded from collection vehicles and subsequently re-loaded onto larger transport vehicles to be taken to a disposal site. Most of the waste comes from outside the communities that are home to the WTSs and, in part, from outside the local municipality. WTSs are part of regional waste streams and serve the economic needs of the region and the waste industry. The affected communities assert that WTSs, in combination

The clustering and disproportionate siting of noxious facilities in low-income communities and communities of color led to the creation of the environmental justice movement. The siting and operation of waste transfer stations is such an example. For several years, communities around the country have raised the issue of waste processing facilities that are disproportionately sited in and impact on environmental justice communities to the National Environmental Justice Advisory Committee (NEJAC).

NEJAC formed the Waste Transfer Station Working Group to conduct a factual examination of waste transfer station siting and operation, with a focus on alleviating the impacts of clustering, disproportionate siting, and unsafe operations in low-income communities and communities of color.

In deliberating on its recommendations, the Working Group was challenged with resolving the issue of the clustering of waste transfer stations with few environmental controls and the legitimate role that waste transfer stations play in providing an essential municipal service—the economical disposal of solid waste. The recommendations in this report are intended to identify areas that will allow for the sustainable management of waste transfer stations and promote equality in the distribution and siting of these facilities.

Some of the recommendations in this report focus on policy and regulatory changes, while other recommendations focus on voluntary standards and partnerships between local, state, and federal governments. The Working Group sought to implement NEJAC's mission to provide recommendations to EPA to achieve environmental justice. However, these recommendations also call on all levels of government, in the spirit of collaboration that existed among the Working Group, to work with their communities, the waste trade, environmental justice and environmental organizations, and all other stakeholders to implement these recommendations. It must be remembered, however, that these recommendations are merely a beginning. The realization of safe siting and operation of waste transfer stations and livable communities requires good-faith collaboration for its implementation.

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with historic patterns of other negative-impact facilities in their neighborhood, have resulted in degraded health and environmental conditions, as well as displacement of community revitalization plans and economic activity.

These concerns were consistent with concerns raised by citizens that have approached NEJAC and the Waste and Facility Siting Subcommittee about local conditions at WTSs and EPA's role in ensuring more consistent protection at these facilities. In tours conducted by NEJAC, public comments, calls to NEJAC members, and discussions during subcommittee meetings, citizens from New York City, Atlanta, San Francisco, Las Vegas, Philadelphia, Baton Rouge, Washington, DC, Los Angeles, Birmingham, and other cities asked NEJAC to examine EPA's authority under the Resource Conservation and Recovery Act (RCRA) to develop baseline standards for WTSs.

In response, the Waste and Facility Siting Subcommittee developed and approved a resolution that called for a number of EPA actions including examining the risks associated with the siting and operation of WTSs. In February 1998, NEJAC's executive committee approved the resolution and forwarded it to EPA Administrator Carol Browner. The resolution called upon EPA to support the formation of a NEJAC Working Group to evaluate issues such as: 1) the adequacy of current standards that address WTS emissions; 2) illegal commingling of hazardous and medical wastes; 3) the adequacy of regulatory standards to address the transport of waste from city, interstate; and 4) regional environmental and health impacts, and means to ensure public participation.

At the May 1998 meeting of the subcommittee in Oakland, California, the Office of Solid Waste and Emergency Response (OSWER) agreed to support the establishment of a NEJAC Working Group. The Waste Transfer Station Working Group was formed to conduct a factual examination of WTS siting and operation and to recommend actions to alleviate the impacts on communities and ensure safe operation of WTSs. The Working Group is made up of individuals with the diverse perspectives necessary to provide a thorough and fair examination of these difficult issues. They included representatives of community-based and environmental justice organizations, private and public waste trade associations, and local governments.

Given the significant budget constraints of the project, the subcommittee decided to conduct fact-finding in two cities in which citizens had expressed concerns representative of the issues associated with WTS siting and operation across the United States. New York City and Washington, DC, were known to have WTSs with considerable controversy and were accessible within a small travel budget. Although the subcommittee report focuses primarily on the concerns of these two urban environments, it was supplemented by members' experiences in other cities. The Working Group was mindful that the concerns raised by clustered facilities in New York City and Washington, DC, were serious, and similar situations in other parts of the country have been raised to NEJAC. However, the Working Group was also made aware that there existed well-designed and well-sited WTSs in parts of the country, and that its examination did not address differences in rural, tribal, and suburban communities. Therefore, the Working Group endeavored to outline a national baseline that would be consistent with good practices in place throughout the country, and that would upgrade standards in cities with the kinds of problems seen first hand in New York City and Washington, DC, in a manner that acknowledged the limitations of its examination.

In November 1998 and February 1999, the Working Group held fact-finding sessions in New York City and Washington, DC, respectively, to gather information regarding the operation of WTSs and their impact on surrounding communities. These sessions followed a two-day format. The first day the Working Group toured the WTSs in the area; the second day the Working Group hosted a public

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meeting to which representatives from various stakeholder groups were invited to present information about WTSs. At both the New York and Washington meetings, the Working Group heard from residents and business owners, environmental justice and environmental groups, community representatives, waste industry representatives, technical organizations, and state and local government officials.

After the meetings, the Working Group began drafting this report based on the information gathered. The Working Group also researched the ways that other parts of the nation are managing WTSs. Even though the meetings were only held in New York City and Washington, DC, the Working Group sought to gain information on the perspectives of other areas of the nation. This information was gathered by Working Group members communicating directly with several stakeholders from across the nation, and by soliciting input and comments on a draft recommendations report issued October 7, 1999.

The draft report was sent to more than eighty people, representing state and local agencies, environmental, community, industry, and technical groups and associations. Following the distribution of the draft report, several of the reviewers pointed out that the cities of New York and Washington represent extreme and, perhaps, atypical urban settings. They indicated that other areas of the country have their own, unique set of challenges that can best be addressed at the state and local level. Reviewers' comments are summarized in a report appendix.

II. Waste Transfer Stations And Environmental Justice

WTSs are facilities where municipal waste is unloaded from collection vehicles and temporarily stored before being reloaded onto larger long-distance transport vehicles for shipment to landfills. Based on observations by the Working Group and information presented to it, WTSs are disproportionately clustered in low-income communities and communities of color. They are commonly found adjacent to high-density housing, recreational areas, food establishments, and small businesses.

These temporary storage areas for waste can bring many problems to a community if they are not managed correctly. In addition to quality of life issues such as noise, odor, litter, and traffic, WTSs can cause environmental concerns associated with poor air quality (from idling diesel-fueled trucks and from particulate matter such as dust and glass) and disease-carrying vectors such as rodents and roaches.

Currently, there are no national standards or regulations that apply directly to the management of WTSs. Because WTSs are managed mainly at the local level by local ordinances and enforcement agencies, the variance at which they are operated can be great. Moreover, many WTSs in urban areas are located in mixed zoned neighborhoods of color. WTSs in New York and Washington process waste that is generated not only within the municipality, but also from surrounding municipalities and states.

From the Working Group's perspective, the issues surrounding WTSs should be raised to EPA, states, and local governments. The recommendations provided in this report support the need for national standards, more community involvement in local land-use decisions, and tougher enforcement at the local level. The Working Group recognizes that the recommendations in this report are gathered from a limited number of meetings and with a limited amount of resources. It is the Working Group's desire to bring this important issue to light and challenge community groups and federal, state, and local governments to respond aggressively to a problem that will continue to grow with the population.

III. Recommendations

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The recommendations in this report call for actions that systematically address the issues associated with siting and operating WTSs. These recommendations range from regulatory actions and the development of a best practices manual to immediate actions in the communities suffering from the clustering and disproportionate siting of WTSs, WTSs in close proximity to residential uses, and the unsafe operation of WTSs. At the core of these recommendations is the direct and continuous participation of communities in every aspect of the development and implementation of these recommendations.

To ensure a thorough and fair examination of these difficult issues and to develop recommendations that could be implemented from a regulatory, technical, and political perspective, the Working Group consisted of individuals representing a variety of stakeholders such as nearby residents, business owners and employees, community groups, environmental justice organizations, the private and public waste trade, and local government. In conducting its work, the Working Group consulted with EPA and sought information and recommendations from individuals representing diverse perspectives.

With a focus on solution-building, the Working Group sought to develop recommendations using a consensus-based process to develop as much as unanimity as possible for its recommendations. This process required every member to understand the complexity of the issues, their representative positions, and to struggle with recommendations that would respond to the issues of WTS siting and operation. The Working Group did achieve consensus on all recommendations—a significant feat in light of the diversity of the Working Group. The achievement of agreement on these recommendations does not mean that the Working Group does not have concerns regarding their full implementation. Only through the full and complete implementation of these recommendations will the suffering of communities from the clustering, disproportionate siting, and unsafe siting and operations of WTSs be addressed, and all future WTSs be designed and operated in a safe manner. The full implementation of these recommendations will require the commitment of resources and the collaboration of EPA, state and local permitting agencies, with local communities.

The Working Group strongly urges EPA and state and local regulatory agencies to review these recommendations in the light of the good faith and hard work of the Working Group. Moreover, it must be noted that these recommendations are presented as a packaged, comprehensive strategy to fully address the issues of WTSs and should be viewed as an initial framework for further development and implementation. It is the view of the Working Group that the elimination of any of these recommendations would not fully respond to the conditions observed.

The following is an overview of the recommendations set forth in the report.

a. Resource Conservation Recovery Act (RCRA)—Solid Waste Management Planning

RCRA Sections 6942 and 6947 provide the authority to the EPA to issue regulations for the establishment of solid waste management plans by states. In developing these plans, this authority permits EPA to consider the "characteristics and conditions associated with solid waste management, including collection, storage, processing, and disposal methods and practices; location of facilities; reasonable protection of ambient air quality; population density, distribution and projected growth, type and location of transportation; constituents and generation of waste and the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management." EPA is also provided the authority to review and approve solid waste management plans and withdraw approval if they fail to comply with minimum requirements.

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The Working Group believes that the above-noted provisions provide EPA with the authority to directly address the impacts of WTSs. Moreover, WTS siting and operations observed during the Working Group's fact-finding tours, as well as issues raised to NEJAC over several years, justifies EPA's use of such authority. There is unanimity for the issuance of federal siting and operation criteria to be included in state solid waste management plans. The Working Group also considered recommending the promulgation of federal standards for WTSs comparable to those EPA has published for municipal solid waste landfills. However, one member of the Working Group, representing a solid waste professional association, did not agree that EPA should establish enforceable federal regulations for WTSs; he did not believe that the Working Group's effort demonstrated the existence a nationwide problem of such severity to justify federal regulation, and he does not agree that RCRA provides EPA with the legal authority to do so.

Based on these considerations, the Working Group recommends that EPA:

- Issue federal criteria to revise solid waste management plans to address the safe and equitable siting and operation of WTSs;
- Review solid waste management plans of states where the presence of WTSs has been implicated as a threat to public health, the environment, and environmental justice;
- Convene a meeting of organizations that can provide resources to support the coordination of solid waste planning; and
- Convene regional planning workshops to address the clustering of WTSs and the siting of new facilities in an equitable fashion where solid waste handling involves multiple jurisdictions.

b. Facility Siting

The report includes recommendations that address the two fundamental challenges of siting new WTSs and the existing clustering of WTSs in a manner that reflects the principles of environmental justice. The basis for the recommendations to address these challenges is that local land uses have, in effect, predetermined the siting of negative land uses to low-income communities and communities of color. While WTS siting is "limited" to purportedly race- and class-neutral manufacturing zones, WTSs are sited disproportionately in areas adjacent to poor communities and communities of color. Among the reasons cited for this circumstance are that communities in such areas were grandfathered into industrial zones; such areas are adjacent to industrial zones; such areas permit a mixture of commercial, industrial, and residential uses; and rezoning decisions to eliminate such negative land uses come from affluent white communities. Therefore, the recommendations presume that local land-use decisions alone cannot ensure the prevention of clustering or disproportionate siting of WTSs in low-income communities or communities of color or the protection of public health.

Clustering and disproportionate siting of WTSs: With respect to existing circumstances of WTSs that are clustered, or disproportionately sited in communities, the Working Group recommends the following transition strategy to provide funding and technical assistance for a neighborhood-specific facilitated process to develop a "transition strategy" to reduce the total number and capacity of WTSs in such communities and to identify uses acceptable to the community. The transition strategy would be based on:

- Identifying the total number of WTS, total throughput, and capacity of waste processed with the community;
- Identifying WTSs that have a high degree of incompatibility with adjacent community land uses;
- Establishing fair goals for reducing total solid waste throughput in the community and consolidating

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- and closing WTSs that have high degree of incompatibility with adjacent community land uses by working with facility owners;
- Establishing a mechanism to transition closed facilities to uses acceptable to impacted communities and in consideration of investments by facility owners;
- Establish a plan for WTSs continuing operation to implement best management practices, transportation impacts, and community complaint systems.

Future siting of WTSs: With respect to the future siting of facilities, the Working Group recommends that the siting of WTSs be based on an examination of the entire area or region that solid waste is handled, particularly because WTSs provide an essential municipal service. The Working Group recommends the following process for selection of such sites:

- Establish an advisory panel of representatives of communities (particular from communities with existing WTSs), municipalities, public and private waste trade groups, environmental justice and environmental organizations, local community development organizations, and permitting agencies.
- The advisory panel should establish site-selection criteria—to which all WTSs (public or private, small or large) would be subject—that prevent clustering and disproportionate siting and ensure the protection of public health and the environment.
- Subject the criteria to public review and finalize them based on the review.
- In consultation with the advisory panel, identify sites meeting the criteria and subject them to public review.
- Subject the sites identified to environmental and community impact analyses. Provide communities adjacent to each site with independent technical services to review the impacts from the proposed site.
- Select sites based on an affirmative demonstration that they will not result in clustering or disproportionate impacts.

Permitting: With respect to processing applications to site and operate WTSs, the Working Group recommends that EPA work with local permitting agencies to:

- Identify all neighborhoods potentially impacted by the proposed WTSs and their transportation routes;
- For all potentially impacted neighborhoods, establish a baseline of information needed to assess impacts for the proposed facility including demographics, sensitive receptors, health statistics, and impacts from similar facilities;
- Require the identification of the source and volume of waste to be processed;
- Require an affirmative demonstration that clustering and disproportionate impacts will not result from the proposed WTSs;
- Require the demonstration of the application of best management practices for the proposed WTS; and
- Require the submission of a transportation plan.

c. Best Management Practices

Separate from the recommendation for the federal regulation of WTSs, the Working Group unanimously recommends that EPA develop a manual of best management practices for WTSs. The Working Group learned of methods used at some WTSs around the country and the world that are effective in eliminating or reducing impacts. A manual discussing such methods would serve as an

information base for facility operators, government regulators, and the public of practices deemed best for addressing various types of facilities and impacts.

In developing a comprehensive best management practices manual, the Working Group recommends developing a baseline of impacts from WTSs. The Working Group recommends that the baseline consider the various types of settings (e.g., urban, suburban, rural, and tribal), location (e.g., waterfront, land-based), and proximity to human populations. The baseline also must include the variability of impacts depending on the type of waste processed. The Working Group was made aware of various facilities that are functionally equivalent to WTSs but process such diverse wastes as asbestos, medical, and low-level radioactive wastes. The best management practices manual would be developed based on the baseline of impacts. The report provides an initial framework for the major areas that must be considered in the manual.

The Working Group recommends that EPA convene a diverse focus group to ensure that the best management practices consider all pertinent variables in siting, operation, geography, and government structure. At a minimum, the focus group should include representatives from:

- State, tribal, and local regulatory agencies responsible for issuing design and operating permits for WTSs and for ensuring compliance;
- Public and private solid waste professionals with expertise in planning, designing, and operating WTS; and
- Community, environmental and environmental justice organizations that have been involved with solid waste and WTS issues.

d. Community Participation

The direct participation of community residents, particularly those that reside in the communities burdened by the clustering and disproportionate siting of WTSs, is critical to the development of solutions that are responsive to community needs and concerns. All the recommendations in this report call for meaningful and continuous community participation in every aspect of the development and implementation of these recommendations.

The Working Group recommends that the process of community outreach and consultation be guided by the "NEJAC Public Participation Model." In addition, because components of implementing these recommendations are inextricably linked to issues of local land use, the Working Group recommends that community consultation to identify community uses, plans, and environmental justice circumstances be based on the NEJAC Waste & Facility Siting Report: "Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope," and EPA's "Land Use Based Remedy Selection Guidance."

The Working Group also recommends providing of technical assistance to communities to promote meaningful participation.

e. Marine Waste Transfer Stations

The use of marine WTSs was identified by community residents during the Working Group's fact-finding sessions as an equitable method to process solid waste in a manner that would minimize impacts to the community. EPA had initiated a rule-making process for such facilities under the authority of the Shore Protection Act, entitled: "Waste Handling Practices for Vessels and Waste

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Transfer Stations." The Working Group recommends that EPA finalize this rule.

f. Air Quality and Clean Air Act

The degradation of air quality by WTS operations was a consistent issue raised during the fact-finding sessions. The Working Group held preliminary discussions with EPA's Office of Air and Radiation on strategies to address air quality impacts. It should be noted that some Working Group members expressed the view that the topic of air quality was outside their area of expertise. However, the Working Group recommends that EPA move forward on a program to characterize air emissions from WTSs and to develop strategies to address them. The Working Group recommends EPA's further investigation of the following:

- Examine comprehensively air quality controls for inclusion in the best management practices manual such as air monitoring, odor elimination technologies, and negative air pressure designs for the types of air contaminants at WTSs.
- Issue guidance to calculate emissions from WTSs includes emissions from combustion engines within WTSs.
- Work with states to develop an indirect source review program pursuant to the authority of the Clean Air Act [42 U.S.C. 7401(a)(5)] to mitigate the effects of "any facility, building structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution."
- Mitigate the emissions from heavy-duty diesel vehicles by establishing programs for converting older, high-emitting engines to cleaner engines; establishing a program to identify and monitor diesel trucks with pollution control systems that can be disabled and retrofit them with low-NO_x kits; and dedicating a portion of settlement funds in the settlement reached with truck engine manufacturers for clean air projects in communities clustered with WTSs.
- Examine the increase in vehicle miles traveled associated with the transport of solid waste.
- Foster the establishment of clean fuel fleet.

g. Waste Reduction

During the Working Group's fact-finding sessions, it was clear that part of the capacity needed for WTS was due the inadequate waste reduction programs. While waste reduction was not the focus of the Working Group's activities, the Working Group recommends that EPA examine and assess the effectiveness of waste reduction strategies and programs throughout the country. In particular, the Working Group recommends the following be examined:

- Effective technologies and techniques to reduce the total volume of solid waste generated and to maximize recycling levels;
- Incentives to encourage waste reduction and recycling; and
- Creation of local businesses involved in waste reduction and recycling.

h. Regulatory Review and Enforcement

Inadequate enforcement was commonly cited by participants in the Working Group's fact finding sessions as a key reason for the impacts from WTSs operations. Among the enforcement issues that they raised included confusion or conflict regarding the lead local enforcement agency; unclear standards to undertake enforcement actions; unresponsiveness of local regulatory agencies in addressing patterns of non-compliance identified by community residents; inadequate enforcement

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staffs; and the hindrance of regulatory enforcement by court injunctions brought by facility owners.

To begin addressing these issues, the Working Group recommends that:

- Permitting agencies charge a fee as part of each WTS permit to fund adequate enforcement;
- Environmental monitors be required as part of every permit;
- Multi-jurisdiction enforcement agreements be developed where waste is processed and handled in more than one jurisdiction;
- The federal government exhibit leadership in implementing these recommendations in Washington, DC, since the federal government is a major generator of solid waste; and
- Independent third-party inspectors be hired for all municipally owned or operated facilities.

Because enforcement of WTS standards is primarily a local municipal function, these recommendations set forth a strategy for the local lead enforcement agency. The Working Group recommends the implementation of these recommendations by EPA and other federal enforcement agencies providing assistance to the local enforcement agencies.